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DAVIDSON, DAVIDSON
& KAPPEL, LLC
14TH FLOOR
485 SEVENTH AVENUE
NEW YORK NY 10018

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OFFICE OF PETITIONS

In re Application of:
Oshlack
Filed: 4 November, 2003
Application No. 10/701,041
Docket No. 200.1133CON2

DECISION ON PETITION

This is a decision on the letter, considered as a petition, filed on 25 August, 2004, under 37 C.F.R. §1.53 as a request that the application obtain a filing date of 4 November, 2003, for page numbered 50 (specification: description) of the application.

The petition under 37 C.F.R. §1.53 is **GRANTED**.

BACKGROUND

This nonprovisional application was deposited on 4 November, 2003.

On 24 June, 2004, the Office mailed a "Notice of Omitted Items in a Nonprovisional Application," and indicated that, while a filing date had been granted, "Page(s) 50 of the specification (description and claims)" appeared to have been omitted from the application.

Petitioner responded with a petition on 25 August, 2004,¹ along with, *inter alia*, a copy of the

¹ Petitioner's Certificate of Mailing is incomplete, and neither sets forth the date of mailing nor is dated therein. However, in a telephone conversation of 20 September, 2004, the Office confirmed with Petitioner that his transmittal authorized the charge of extensions of time to Deposit Account 50-0552, and a one- (1-) month extension of time (\$110.00) is so charged.

"Page(s) 50 of the specification (description ***)," and a copy of the date-stamped ("110403 ") receipt card indicating, *inter alia*, that the following items had been received by the Office:

* * *

Continuation Utility Application Transmittal (4 pages);
Specification (86 pages);
Informal drawings (3 pages);
Copy of Executed Declaration and Power of Attorney (2 pages);
Certificate of Express Mail (1 page);
Preliminary Amendment (5 pages)

* * *

As is clear from the foregoing, the receipt card (see: MPEP §503²) did not specify the pages containing the Specification, Claims and Abstract, however, a review of the record indicates that the Description is contained in pages 1 through 77, the Claims in pages 78 through 85, and the Abstract page 86—and of the pages present in the record (1 through 49, 51 through 86), there are no duplicate pages.

² MPEP §503 provides in pertinent part:
§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

Because the return postcard receipt properly itemizes the contents of the application package in accordance with MPEP §503, the Office concludes that the page 50 of the specification (description) of the application was submitted on 4 November, 2003, and subsequently was misplaced in the Office.

Accordingly, the petition under 37 C.F.R. §1.53 is **granted**; the petition fee is waived; and the Notice mailed on 24 June, 2004, hereby is withdrawn as to page 50 of the specification (description) of the application.

This application is released to the Office of Initial Patent Examination for further processing with a filing date of 4 November, 2003, using:

1. pages 1 - 49 and 51 - 86 (Specification, Claims, Abstract, and 3 sheets of drawings, deposited on 4 November, 2003; and
2. page 50 (Specification: description), deposited on 25 August, 2004;
3. with direction to OIPE to correct Office records to reflect that 86 pages of specification (description, claims and abstract) and 3 sheets of drawings were present on filing on 4 November, 2003, and forward to Petitioner a corrected filing receipt setting forth a filing date of 4 November, 2003, reflecting therein that 86 pages of specification (description, claims and abstract) and 3 sheets of drawings were present on filing.

Thereafter, the application will be considered by the examiner in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703)305-9199.



John J. Gillon, Jr.
Senior Attorney
Office of Petitions